HIGH COURT OF CHHATTISGARH AT BILASPUR
SB: HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
M.C.C.NO. 72/2004

M/s. Satjas Glorocks (P) Ltd.,
Khurana Cold Storage,
Ashram G.E. Road,
Raipur, through its Director
Shri Kanmaljit Singh Khurana,
Aged about 42 years,
r/o. Civil Lines, Raipur (CG)

versus

Bharat Aluminium Company Ltd.,
through the Managing Director,
Korba, Dist. Korba (CG) & another.

POST FOR ORDER 9 /01/2006

Sd//-
V.K.Shrivastava
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

SB: Hon'ble Shri Vijay Kumar Shrivastava, J.

M.C.C.No.72 OF 2004

Applicant : M/s. Satjas Glorocks(P) Ltd., Khurana Cold Storage, Ashram, G.E. Road, Raipur, Through its Director Shri Kanmaljit Singh Khurana, Aged about 42 years, r/o. Civil Lines, Raipur (CG)

Versus

Respondents : 1) Bharat Aluminium Company, Ltd., through the Managing Director, Korba, Dist. Korba, Chhattisgarh.

2) The General Manager, (Commercial), Bharat Aluminium Company Ltd., Korba, Dist. Korba (CG).

Present

Mr. Anand Kumar Tiwari, counsel for the applicant.

Mr. P. Diwakar, Sr. Advocate with Ms. Sunita Jain, counsel for respondents.

ORDER

(Passed on 9 January, 2006)

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") to appoint an Arbitrator for adjudication of the disputes arise between the parties in connection with arbitral agreement.

(2) The applicant was awarded the contract for Mining and Transportation of Bauxite from the captive mines of the respondents at Mainpat to their Korba Plant for the period of three years and agreement thereof was executed and signed on 06/03/2002. The terms and

conditions of the agreement contains Arbitration Clause i.e.33 which reads as below.

> *"33.1: Any dispute of difference of any nature whatsoever, any claim, cross claim, counter claim and set off by the "Company" against the "Contractor" or regarding any rights, liability, act omission or account of any of the parties hereto arising out of or in relation to the agreement shall be referred to the sole arbitration of the arbitrator nominated by the President/Managing Director of the "Company". It is also a term of this contract that no person other than a person nominated by the President/Managing director of "Company" as aforesaid shall act as Arbitrator, hereunder. The award of the Arbitrator so appointed shall be final conclusive and binding on all parties to the agreement subject to the modification or re-enactment thereof and the rules made hereunder for the time being in force shall apply to the arbitration proceeding under this clause.*
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> *33.2: The award shall be made in writing and published by the arbitrator within thee months after entering upon the reference or within such extended time nor exceeding further six months, as the sole arbitrator shall be deemed to have irrevocably given their consent to the arbitrator to make and publish the award within the period referred to herein above and shall not be entitled to raise objection or protest thereto under any circumstances whatsoever.*
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> *33.3: The arbitrator shall have power to order and direct either of the parties to abide by observe and perform all such directions as having regard to the matters in offence i.e., dispute before him. The arbitrator shall have all summary power the arbitrator shall have and may take such evidence oral/or documentary as the arbitrator in his absolute discretion thinks fit and shall be entitled to exercise all powers under the Arbitration and Conciliation Act, 1996.*
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> *33.4: All dispute, difference, claims and questions whatsoever which may arise either during the continuance of this contract or afterwards between "Company" and the "Contractor" relating to the interpretation and for exceptions of any clause of this contract or of any act, deed or omission of any part or as to any other matter or any way relating to the rights, duties, obligations or liabilities or either party under these clauses will be settled by arbitration in accordance with the rules of arbitration of Indian Council of Arbitrator and the award made in pursuance thereof shall be binding on the parties".*

3) Respondents unilaterally and without consent of the applicant amended the agreement. Respondents requested the applicant for engaging an additional transport vehicles as a result of that applicant deployed additional multi axial vehicle by making a huge investment of about Rs.250 lakhs, but the Executive Engineer of PWD, Korba issued instructions to stop using multi axial vehicles on the ground that bridges on the roads are old and weak. Respondents again amended the agreement unilaterally and without consent of the applicant vide their letter dated 09/10/2002. Respondents started deduction @ Rs.5/- (Rupees Five) per metric ton as Panchayat Tax in contravention of the contract and without obtaining the consent of the applicant. Respondents again unilaterally agreed for enhancing the rate of transportation by Rs.50/- (Rupees Fifty) per metric ton and shifted the said burden on the applicant. Respondents without obtaining any consent of the applicant arbitrarily and unilaterally introduced short-term incentive scheme and deducted Rs.4.00,000/- (Rupees Four lakhs) from the bills of the applicant on account of Group Insurance Policy.

4) Applicant requested the respondents vide letter dated 22/03/2003 for the resolution of the natural problems arising in the contract and requested for remedial measures with the reminder on 31/10/2003. Applicant vide letter dated 26/12/2003 made a detailed representation before the respondents and requested for resolving the disputes by means of Arbitration Proceedings by invoking the provisions of Clause No.33 i.e., Arbitral Clause and thereafter applicant stopped to work with effect from 05/01/2004. Respondents instead of making an appointment of Arbitrator denied any kind of dispute between the applicant and respondents and communicated their decision vide letter dated 27/04/2004.

5) Respondents denied the claim of the applicant and averred in their reply that they never asked to deploy any vehicle of any particular make for the purpose of transportation of bauxite from the mines to the plant. When the employees went on strike in the month of February, 2003, respondents to resolve the strike for gain and benefit of the contractors took appropriate action and the incentive scheme was introduced by the respondents to boost the contractors for achieving their target and to gain some extra benefit. As per term of contract, it was the duty of the contractor to obtain Group Insurance Policy in favour of the labourers. The amendment has been made in accordance with the provisions of the contract. The revision of the rates as desired by the applicant was not within the scope of the contract. The applicant has failed to execute the agreement and consequently, respondents suffered huge loss. Even no proper notice was issued to terminate the contract and for appointment of Arbitrator. As per contract the sole arbitrator is to be nominated by the President or by the Managing Director.

6) Both the parties in support of their case have filed affidavit and documents.

7) From the averment made by both the parties, it is apparent that a number of disputes have been raised by the applicant and have been denied or under some pretext accepted by the respondent. Therefore, the dispute arising out of the contract is apparent which requires adjudication by the Arbitrator. Annexure A/16 is a letter dated 26/12/2003 issued by the applicant to respondents for settlement of disputes/case. On 05/01/2004 a reminder (Annexure A/17) was issued by the applicant to respondents. Reply sent by the respondents to applicant

is Annexure A/18 dated 27/04/2004 and the said letter has been sent to the applicant along with their letter dated 03/01/2004. Respondents very specifically stated that all the issues raised by the applicant are beyond the terms and conditions in the contract and are not related to the contract, therefore, there exists no dispute which can be referred to arbitration under Clause 33 of the agreement and by stating that none of the claims are acceptable under Clause 33 of the agreement respondents denied appointment of arbitrator in accordance with arbitral clause which empowers to nominate the arbitrator by the President/Managing Director of the Company.

8) It is apparent that between both the parties in relation to contractual work a written contract is there which contains arbitration clause. Although a number of disputes for adjudication have been raised and apparently exist yet, respondents failed to exercise their power by nominating arbitrator for adjudication of the dispute. Therefore, applicant rightly preferred this application for appointment of arbitrator in accordance with Section 11 (6) of the Act. Being a Judge nominated by Hon'ble the Chief Justice, I have to proceed to appoint an Arbitrator for the disputes raised by the applicant and arose out of the contract between the parties.

9) After due consideration of all the facts, disputes and jurisdiction within which the dispute arose, I appoint Shri Justice PNS Chouhan, retired Judge as Arbitrator for settlement of the disputes by the Arbitrator in accordance with the rules of Arbitration of Indian Council of Arbitrator and prevailing law/rules, subject to his consent.

Sd//-
V.K.Shrivastava
Judge

Raju